



Paper No. 6

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In re Application of:
AHOTUPA, MARKKU
Application No. 09/270,480
Filed: 03/15/1999
Attorney Docket No. O0013/7075OFFICE OF PETITIONS
AND APPEALS
ON PETITION

This is a decision on the June 21, 2000 request to withdraw the holding of abandonment.

FACTS

This application became abandoned for failure to timely file a proper reply to the notice to file missing parts mailed on April 6, 1999. A shortened statutory period of two (2) months was set for replying. No reply was received within that time. Therefore, the deadline for replying passed on June 6, 1999 and the application lapsed into an abandoned state as of the following day, June 7, 1999.¹

Petitioner allegedly filed this petition under 37 C.F.R. §1.137(a) on April 7, 2000. However, this petition was not received. Therefore, it was resubmitted via facsimile on June 21, 2000. The petition alleges that his delay was unavoidable because he never received the April 6, 1999 notice to file missing parts.

The showing required to establish nonreceipt of an office action is discussed in M.P.E.P. 711.03(c)II.

"To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993)

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g. if the practitioner has a history of not receiving Office actions).

¹ See 35 U.S.C. §133 and 37 C.F.R. §1.134-136

Evidence of nonreceipt of an Office communication or action (e.g. Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment."

Although Petitioner has substantially complied with the above-cited reference, Petitioner's docket record indicates that a paper regarding this application was received from the United States Patent and Trademark Office on April 9, 1999. However, it is difficult for the Commissioner to interpret just what that mailing was. In light of the ambiguity, *this petition is dismissed*.

The Commissioner suggests clarification of how to interpret the docket record submitted so that the nature of that mailing can be determined.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted.² The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.137(a)". This is **not** a final agency action within the meaning of 5 U.S.C. §704.

Applicant is alternatively encouraged to consider filing a petition under 37 C.F.R. §1.137(b) to revive an application unintentionally abandoned. That rule provides that where the delay in replying was unintentional, a petition may be filed to revive the application or lapsed patent, which will be grantable if accompanied by:

(1) The required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may ne met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;

(2) The petition fee as set forth in 37 C.F.R. §1.17(m);

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

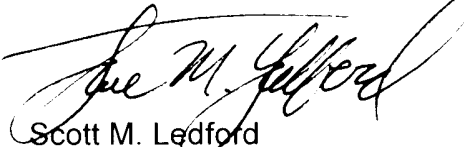
(4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. §1.20(d)) required pursuant to 37 C.F.R. §1.137(c).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By hand: Office of Petitions
Four Crystal Plaza, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to the undersigned in the Office of Petitions at (703) 306-5593.



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Office of the Deputy Assistant Commissioner
for Patent Policy and Projects